Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00528-CV

IN THE INTEREST OF G.K.B., JR., a Child

From the 407th Judicial District Court, Bexar County, Texas
Trial Court No. 2021PA00020
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Lori I. Valenzuela, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Luz Elena D. Chapa, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: May 4, 2022

AFFIRMED

On November 2, 2021, the trial court held a bench trial at which one witness testified. Following the hearing, the trial court signed an Order of Termination terminating V.G.'s parental rights to her son, G.K.B., Jr.[1] On appeal, V.G. challenges only the trial court's best interest finding.[2] We affirm.

STANDARD OF REVIEW

When reviewing the sufficiency of the evidence, we apply the well-established standards of review. *See* TEX. FAM. CODE §§ 101.007, 161.206(a); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex.

[1] To protect the privacy of minor children, we use initials to refer to children and their biological parents. TEX. FAM. CODE § 109.002(d); TEX. R. APP. P. 9.8(b)(2). At the time of the hearing, G.K.B. was four years old.

[2] In the same termination order, the trial court also terminated the parental rights of G.K.B.'s father. The father did not appeal the order.

2006) (per curiam) (factual sufficiency); *In re J.P.B.*, 180 S.W.3d 570, 573 (Tex. 2005) (per curiam) (legal sufficiency). The trier of fact is the sole judge of the credibility of witnesses and the weight to be given their testimony. *J.P.B.*, 180 S.W.3d at 573. In a bench trial, such as here, "the trial judge is best able to observe and assess the witnesses' demeanor and credibility, and to sense the 'forces, powers, and influences' that may not be apparent from merely reading the record on appeal." *In re A.L.E.*, 279 S.W.3d 424, 427 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (citation omitted). We therefore defer to the trial court's judgment regarding credibility determinations. While we must detail the evidence relevant to the issue of parental termination when reversing a finding based upon insufficient evidence, we need not do so when affirming a verdict of termination. *In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014).

To terminate parental rights pursuant to Family Code section 161.001, the Department has the burden to prove by clear and convincing evidence: (1) one of the predicate grounds in subsection 161.001(b)(1); and (2) that termination is in the best interest of the child. *See* TEX. FAM. CODE §§ 161.001(b), 161.206(a). In this case, the trial court found evidence of two predicate grounds to terminate V.G.'s parental rights, specifically section 161.001(b)(1) subsections (O) and (P). The trial court also found termination of her parental rights was in G.K.B.'s best interest. In V.G.'s sole issue on appeal, she contends the evidence is legally and factually insufficient to support the trial court's best-interest finding.

BEST INTEREST

When considering the best interest of the child, we recognize the existence of a strong presumption that the child's best interest is served by preserving the parent-child relationship. *In re R.R.*, 209 S.W.3d 112, 116 (Tex. 2006) (per curiam). However, we also presume that prompt and permanent placement of the child in a safe environment is in the child's best interest. TEX. FAM. CODE § 263.307(a). The Department has the burden to rebut these presumptions by clear

and convincing evidence. *See, e.g., In re R.S.-T.*, 522 S.W.3d 92, 97 (Tex. App.—San Antonio 2017, no pet.). "'Clear and convincing evidence' means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE § 101.007; *R.S.-T.*, 522 S.W.3d at 97. To determine whether the Department satisfies its burden, the Texas Legislature has provided several statutory factors[3] for courts to consider regarding a parent's willingness and ability to provide a child with a safe environment, and the Texas Supreme Court has provided a similar list of factors[4] to determine a child's best interest. TEX. FAM. CODE § 263.307(b); *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976).

A best interest finding, however, does not require proof of any particular factors. *See In re G.C.D.*, No. 04-14-00769-CV, 2015 WL 1938435, at *5 (Tex. App.—San Antonio Apr. 29, 2015, no pet.) (mem. op.). Neither the statutory factors nor the *Holley* factors are exhaustive, and "[e]vidence of a single factor may be sufficient for a factfinder to form a reasonable belief or conviction that termination is in the child's best interest." *In re J.B.-F.*, No. 04-18-00181-CV,

[3] These factors include, inter alia: "(1) the child's age and physical and mental vulnerabilities; (2) the frequency and nature of out-of-home placements; (3) the magnitude, frequency, and circumstances of the harm to the child; (4) whether the child has been the victim of repeated harm after the initial report and intervention by the department; (5) whether the child is fearful of living in or returning to the child's home; (6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home; (7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home; (8) whether there is a history of substance abuse by the child's family or others who have access to the child's home; (9) whether the perpetrator of the harm to the child is identified; (10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; (11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; (12) whether the child's family demonstrates adequate parenting skills [. . .]; and (13) whether an adequate social support system consisting of an extended family and friends is available to the child." TEX. FAM. CODE § 263.307(b).

[4] Those factors include: (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist those individuals to promote the best interest of the child; (6) the plans for the child by these individuals or the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent that may indicate the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Holley*, 544 S.W.2d at 371-72.

2018 WL 3551208, at *3 (Tex. App.—San Antonio July 25, 2018, pet. denied) (mem. op.). Evidence that proves a statutory ground for termination is probative on the issue of best interest. *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002). "A trier of fact may measure a parent's future conduct by [her] past conduct [in] determin[ing] whether termination of parental rights is in the child's best interest." *In re E.D.*, 419 S.W.3d 615, 620 (Tex. App.—San Antonio 2013, pet. denied). This conduct can include drug use, which can destabilize the home and expose children to physical and emotional harm if not resolved. *See, e.g., In re K.J.G.*, 04-19-00102-CV, 2019 WL 3937278, at *8 (Tex. App.—San Antonio Aug. 21, 2019, pet. denied) (mem. op.). In analyzing these factors, the court must focus on the best interest of the child, not the best interest of the parent. *Dupree v. Tex. Dep't of Protective & Regulatory Servs.*, 907 S.W.2d 81, 86 (Tex. App.—Dallas 1995, no writ).

BACKGROUND

V.G. did not appear at the bench trial. The sole witness at the bench trial was the Department's assigned caseworker since the beginning of the case, Veronica Macias. She testified the case was referred to the Department in early January 2021 when then three-year-old G.K.B. was seen unattended, crossing a road on his tricycle.

Macias stated a service plan was prepared for and sent to V.G., who was living in Virginia. In March, after V.G. received the plan, they reviewed it together. The plan required a psychological evaluation, individual counseling, drug and alcohol assessment, random drug tests, parenting classes, and that V.G. find stable housing and employment. Macias found service providers in Virginia for V.G., gave the providers the necessary paperwork, and gave V.G. the providers' contact information. As of the November 2021 trial, V.G. had started her parenting classes in October, but had not completed any other services or submitted to any drug tests. Macias said V.G. told her she was working at Big Lots and sent Macias a photo of an employment schedule

but not verification. Despite asking for verification of the employment, as of two weeks before trial, V.G. still had not provided verification. Macias said V.G. told her she had mental health issues but had done nothing to address mental health treatment. V.G. also told Macias she struggled with drugs, mainly methamphetamines, but had not completed the drug assessment or treatment. To Macias's knowledge, V.G. had not come to Texas for an in-person visit with her son. However, Macias said V.G. regularly visited with G.K.B. virtually, the visits "were okay," and V.G. had a bond with her son. Macias also testified some of the visits were not appropriate because other people were around V.G. and also trying to talk to G.K.B.

V.G., who was living with her mother in Virginia, wanted the Department to perform a home study of her mother and the Department had requested a study be conducted. According to Macias, V.G. understood she must find her own housing and could not live with her mother if G.K.B. was placed in her mother's home. Other than conservatorship or adoption by his maternal grandmother, the Department would place G.K.B. with nonrelatives for adoption, possibly the current foster home.

Macias said the initial investigation reported G.K.B. "cussed" and exhibited "wild behavior." However, he no longer exhibited this behavior, was doing "extremely well" in his foster home, where he has resided since March, and received therapy.

Macias believed termination of V.G.'s parental rights was in G.K.B.'s best interest because V.G. had not shown she could successfully address the issues that brought G.K.B. into the Department's care, and she had not demonstrated she could provide stability or a safe place for G.K.B. to live, or meet his needs now or in the future. Macias also believed V.G. continued to present an emotional and physical danger to her son.

In its order, the trial court found V.G. failed to comply with the provisions of a court order that established the actions necessary for her to obtain the return of G.K.B. and used a controlled

substance in a manner that endangered G.K.B.'s health and safety, failed to complete a court-ordered substance abuse program, or after completion continued to abuse a controlled substance. The trial court also found termination of V.G.'s parental rights as to G.K.B. was in the child's best interest. On appeal, V.G. challenges the legal and factual sufficiency of the evidence only as to the best interest finding.

ANALYSIS

As stated above, a best interest finding does not require proof of any particular factors and none of the factors we consider are exhaustive. *See G.C.D.*, 2015 WL 1938435, at *5; *J.B.-F.*, 2018 WL 3551208, at *3. "Evidence of a single factor may be sufficient for a factfinder to form a reasonable belief or conviction that termination is in the child's best interest"; *J.B.-F.*, 2018 WL 3551208, at *3; and evidence proving a statutory ground for termination is probative on the issue of best interest. *C.H.*, 89 S.W.3d at 28. "A trier of fact may measure a parent's future conduct by [her] past conduct [in] determin[ing] whether termination of parental rights is in the child's best interest." *E.D.*, 419 S.W.3d at 620. "[T]he best interest standard does not permit termination [of parental rights] merely because a child might be better off living elsewhere." *In re A.H.*, 414 S.W.3d 802, 807 (Tex. App.—San Antonio 2013, no pet.) (citation omitted).

One of the grounds on which the court terminated V.G.'s parental rights was her failure to comply with the provisions of a court order that established the actions necessary for her to obtain the return of G.K.B. The evidence shows V.G. received her service plan in March 2021. Over the next approximately eight months until trial commenced, she had completed none of the services and started only one service—her parenting class—only a few weeks before trial. She had not submitted to drug testing despite an avowed drug problem, had not engaged in a psychological evaluation or counseling despite acknowledging her mental health issues, and provided no verification of her employment. The trial court could have reasonably credited this evidence as

supporting its best-interest finding. *See In re O.N.H.*, 401 S.W.3d 681, 687 (Tex. App.—San Antonio 2013, no pet.) (noncompliance with service plan is probative of child's best interest).

Of the Family Code statutory factors, the trier of fact can consider that G.K.B.'s age made him vulnerable and that V.G. admitted to Macias she struggled with methamphetamine use. *See In re S.B.*, 207 S.W.3d 877, 887-88 (Tex. App.—Fort Worth 2006, no pet.) (considering parent's substance abuse and failure to comply with service plan in holding evidence supported best-interest finding).

Evidence of the *Holley* factors also supports the trial court's best-interest finding. V.G. admitted to Macias she struggled with drug abuse but failed to submit to drug treatment. Illicit drug use is relevant to multiple *Holley* factors, including a child's emotional and physical needs now and in the future, the emotional and physical danger to the child now and in the future, V.G.'s parental abilities, and the acts or omissions that may indicate an improper parent-child relationship. *See Holley*, 544 S.W.2d at 371-72. "Additionally, a parent's illegal drug use exposes [a] child to the possibility that the parent may be impaired or imprisoned." *See In re A.M.L.*, No. 04-19-00422-CV, 2019 WL 6719028, at *4 (Tex. App.—San Antonio Dec. 11, 2019, pet. denied) (mem. op.) (explaining drug use implicates multiple *Holley* factors).

The trial court also could have inferred from V.G.'s past drug use and failure to complete drug treatment and her other services that she lacked parental abilities, including the motivation to seek out and utilize available resources. *See In re J.M.T.*, 519 S.W.3d 258, 270 (Tex. App.—Houston [1st Dist.] 2017, pet. denied) ("A fact finder may infer from a parent's failure to take the initiative to complete the services required to regain possession of [her] child that [she] does not have the ability to motivate [herself] to seek out available resources needed now or in the future."); *see also* TEX. FAM. CODE § 263.307(b)(10), (11) (providing courts may consider willingness and ability of child's family to seek out, accept, and complete counseling services and willingness and

ability of child's family to effect positive environmental and personal changes within a reasonable period of time).

Finally, "[a] child's need for permanence through the establishment of a 'stable, permanent home' has been recognized as the paramount consideration in a best-interest determination." *In re L.G.R.*, 498 S.W.3d 195, 205 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). Macias testified V.G. is currently living with her mother but could not continue to do so if G.K.B. was placed with V.G.'s mother. V.G. has not provided verification of employment. The trial court reasonably could have determined that any stability V.G. might achieve was unlikely to last. *Cf. In re J.O.A.*, 283 S.W.3d 336, 346 (Tex. 2009) ("[E]vidence of improved conduct, especially of short-duration, does not conclusively negate the probative value of a long history of . . . irresponsible choices.").

Viewing all the evidence in the light most favorable to the best-interest finding, and applying the appropriate factors, we conclude the trial court could have formed a firm belief or conviction that termination of V.G.'s parental rights was in G.K.B.'s best interest. We also conclude the evidence is factually sufficient to support the trial court's finding. Here, there is no disputed evidence a reasonable factfinder could not have credited in favor of the finding and there are no undisputed facts contrary to the finding. Therefore, we hold the evidence is legally and factually sufficient to support the trial court's best-interest finding.

CONCLUSION

After reviewing all the evidence in the record, we conclude the State met its burden to establish by clear and convincing evidence that termination of V.G.'s parental rights is in G.K.B.'s best interest. Therefore, we affirm the trial court's Order of Termination.

Lori I. Valenzuela, Justice